

FEDERAL MARITIME COMMISSION

46 CFR Part 540

Docket No. 02-07

FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION - Discontinuance of Self- Insurance and the Sliding Scale, and Guarantor Limitations

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its procedures for establishing passenger vessel financial responsibility for nonperformance of transportation. The proposed rule eliminates the availability of self-insurance, limits those who can provide a guaranty, and discontinues the use of a sliding scale for required coverage of unearned passenger revenue ("UPR").

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed rule to:

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW, Room 1046
Washington, D.C. 20573-0001

E-mail: secretary@fmc.gov

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director
Bureau of Consumer Complaints and Licensing
Federal Maritime Commission
800 North Capitol Street, NW, Room 970
Washington, D.C. 20573-0001

202-523-5787
E-mail: sandrak@fmc.gov

SUPPLEMENTARY INFORMATION:

Section 3, Pub. L. 89-777, 46 U.S.C. app. 817e, (“section 3”)¹ requires passenger vessel operators (“PVOs”)² to establish their financial responsibility to indemnify passengers for nonperformance of transportation. The Commission’s implementing regulations at 46 CFR Part 540, Subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least

‘Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

²For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

110% of the PVO's highest unearned passenger revenue ("UPR")³ over the most recent two-year period, subject to a \$15 million maximum for those PVOs establishing financial responsibility by means other than self-insurance or escrow agreement. However, those PVOs not qualifying by self-insurance may elect to use a sliding scale formula to compute the amount of financial responsibility required, if they can establish five years operational experience in the U.S. trades with a satisfactory explanation of any claim for nonperformance. Self-insuring PVOs must establish net worth equal to at least 110% of UPR.

Recent bankruptcies of several PVOs, coupled with the experience of passengers in receiving payment in satisfaction of claims, have caused the Commission to re-evaluate its rules governing PVO coverage for nonperformance. During the past fifteen months, the following cruise lines embarking passengers from U.S. ports ceased operations: Premier Cruise Operations Ltd., Commodore/Crown Cruise Lines, Cape Canaveral Cruise Lines, Inc., and American Classic Voyages Company ("AMCV")⁴. All but Cape Canaveral filed for bankruptcy. After ceasing operations, Cape Canaveral provided reimbursement to passengers.

³UPR means "passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed." (46 CFR § 540.2(i)).

⁴Currently, the Delta Queen Steamboat Co. does provide limited service via the operations of the DELTA QUEEN and the MISSISSIPPI QUEEN. This service is covered by an approved escrow agreement.

Even though passengers with tickets on Premier and Commodore experienced delays in being reimbursed,⁵ they ultimately were protected by surety bonds under the Commission's PVO program. AMCV, however, had evidenced its financial responsibility by means of the self-insurance provisions of the Commission's rules (46 CFR § 540.5(d)). Its passengers were limited to reimbursement by credit card companies, third party travel insurance the passenger had purchased,⁶ or by filing a proof of claim with the appropriate bankruptcy court. Unfortunately, it appears that many of AMCV's passengers will receive little reimbursement.

Although self-insurers currently are required to submit quarterly and annual balance sheets and income statements, by the time such data are received, financial and economic conditions could change substantially.⁷ Historically, self-insurers under the Commission's program typically are those with the greatest financial vulnerability.* Consequently, self-insurance presents significantly greater risk to passengers than other methods available to PVOs to demonstrate the required evidence of financial responsibility.

'Premier's surety began payments late in the summer of 2001, almost a year after its bankruptcy, and Commodore's began paying claims the first week of January 2002, slightly more than a year after its bankruptcy.

⁶ Often cancellation insurance is offered by both the cruise line itself and by various third party insurers. Not all policies include coverage in the event of bankruptcy.

⁷The financial information submitted by AMCV for the quarter ending June 30, 2001, was submitted on August 30, 2001. This data showed AMCV's net worth clearly exceeding that required by Commission rules for self-insurers. Data for the quarter ending September 30, 2001 had not been submitted by the time AMCV filed for bankruptcy on October 19, 2001.

*Financial data for the two private PVOs presently establishing coverage under the Commission's self-insurance criteria show both companies operating with substantially less than positive net working capital. The Commission currently is working with each of these PVOs to establish a more acceptable form of financial coverage.

During the 1990s, the Commission raised the question of continuing to allow PVO self-insurance on a number of occasions.’ Prior to 1993, the Commission required that a self-insuring PVO maintain both net worth and working capital in an amount exceeding their UPR by 110%. Effective February 1, 1993, the Commission eliminated the working capital requirement, instead requiring at least five years of operation in the U.S. trades with a satisfactory explanation of any claims for nonperformance of transportation, along with the necessary net worth.” The Commission’s recent experiences, particularly with AMCV, indicate that length of operations and net worth are not sufficient criteria to insure the necessary protection to the passenger public.

‘Docket No. 90-1, Security for the Protection of the Public. Maximum Required Performance Amount; Proposed Rule, 55 FR 1850 (January 19, 1990); Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990).

Fact Finding Investigation No. 19, Passenger Vessel Financial Responsibility Requirements, Order of Investigation, 55 FR 34610 (August 23, 1990).

Docket No. 91-32, Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation -- Advance Notice of Proposed Rulemaking and Notice of Inquiry, 56 FR 40586 (August 15, 1991).

Docket No. 92-19, Revision of Financial Responsibility Requirements for Nonperformance of Transportation; Proposed Rule, 57 FR 19097 (May 4, 1992); Final Rule, 57 FR 41887 (September 14, 1992).

Docket No. 92-50, Financial Responsibility Requirements for Nonperformance of Transportation -- Revision of Self-Insurance Qualification Standards; Proposed Rule, 57 FR 47830 (October 20, 1992); Final Rule, 57 FR 62479 (December 31, 1992).

Docket No. 94-06, Financial Responsibility Requirements for Nonperformance of Transportation; Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 FR 33059 (June 26, 1996).

Docket No. 94-21, Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation, 59 FR 52133 (October 26, 1994).

“Docket No. 92-50, supra.

One of the more serious criticisms of self-insurance is the virtual impossibility of protecting passengers when an operator begins to show financial problems. Once its financial situation begins to deteriorate, a self-insuring PVO may not be able to obtain a surety bond or a guaranty. Typically, to provide coverage in such a situation a bond issuer would require, in addition to the bond premium, secure, liquid collateral in an amount close to, if not equal to, the face amount of the bond. Providing such collateral, or even depositing UPR into an escrow agreement, could cause the demise of a PVO that is experiencing financial problems. Similarly, for the Commission to revoke the PVO's self-insurance certificate under such circumstances increases the risk that the PVO would be forced into bankruptcy, thus causing the very nonperformance the Commission seeks to prevent.

The Commission also has considered recent developments impacting its passenger vessel operator financial responsibility program. Those developments include recent cruise line bankruptcies; the aftermath of the events of September 11, 2001; the current economic uncertainty and its effect on sales of cruises; and the impending deployment of a substantial increase in cruise ship capacity. These developments, combined with the financial condition of current self-insurers, inevitably lead to the conclusion that self-insurance is an inadequate method of protecting passengers for non-performance.

Additionally, the Commission occasionally has approved guarantors using the same financial standards as for self-insurers, i.e. net worth. As with self-insurers, the Commission finds those requirements inadequate for guarantors, and proposes to modify its guaranty requirements to limit guarantors to Protection and Indemnity Associations with substantial assets, reserves and reinsurance to protect covered PVOs.

Further, the current sliding scale formula provides for reduced coverage, the amount of which is not based on financial criteria. There is no requirement for a fixed amount under the sliding scale provisions. As a result, the current formula reduces the required financial coverage to levels the Commission now believes are inadequate, in light of recent developments.

Accordingly, the Commission is proposing to amend its rules to eliminate self-insurance as an acceptable method of evidencing financial responsibility under section 3 of P.L. 89-777. In addition, the proposed rule would eliminate the reduced coverage requirements under the Commission's sliding scale formula. If made final, all PVOs who are self-insurers or who use the sliding scale would be required to obtain coverage that comports with the Commission's new rules.

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S. C. 553; section 3 Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a), and for the reasons stated above, the Federal Maritime Commission proposes

to amend 46 CFR part 540 as follows:

PART 540 -- PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. The authority citation to Part 540 continues to read:

Authority: 5 U.S.C. 552,553; secs. 2 and 3, Pub. L. 89-777, 80 Stat.1356-1358 (46 U.S.C. app. 317(e, 817d); sec. 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1716(a)).

2. Revise title and introductory text § 540.5 to read as follows:

§ 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including §540.6 Surety Bonds) of the following methods:

* * * * *

3. In § 540.5, revise paragraph (c) to read:

(c) Filing with the Commission a guaranty on Form FMC- 133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance

of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

4. In § 540.5, remove paragraphs (d) and (e).
5. In § 540.5, redesignate paragraph (f) as paragraph (d).
6. Revise Form FMC- 13 1, Part II, Item 10 to read:

Part II – Performance


* * * * *

10. Items 11 - 14 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

- ☐ Insurance (item 11).
- ☐ Escrow (item 12).
- ☐ Surety bond (item 13).
- ☐ Guaranty (item 14).

7. Remove Form FMC-13 1, Part II, Item 15.

By the Commission.


Bryant L. VanBrakle
Secretary

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[CA 247-0322b; FRL-7158-5]****Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern the emission of volatile organic compounds (VOC) from the transfer of gasoline into stationary storage containers and from gasoline bulk plants and terminals. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must be received by May 23, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX: (415) 947-4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local MBUAPCD Rules 418 and 419. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final

rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule.

Dated: February 15, 2002

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02-9787 Filed 4-22-02; 8:45 am]

BILLING CODE 6660-66-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 151****[USCG-1999-5117]****RIN 2115-AF77****Barges Carrying Bulk Liquid Hazardous Material Cargoes****AGENCY:** Coast Guard, DOT.**ACTION:** Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its advance notice of proposed rulemaking concerning barges carrying bulk liquid hazardous material cargoes in order to focus its resources on rulemakings that more closely affect homeland security.

DATES: The advance notice of proposed rulemaking is withdrawn on April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Felleisen, Hazardous Materials Standards Division, Coast Guard, telephone 202-267-0085.

SUPPLEMENTARY INFORMATION:**Background**

On September 9, 1999, we published an advance notice of proposed rulemaking entitled "Barges Carrying Bulk Liquid Hazardous Material Cargoes" in the **Federal Register** (64 FR 48976). We requested comments on the type and scope of any necessary revisions to regulations affecting barges carrying bulk hazardous material cargoes.

Withdrawal

In the wake of the September 2001 terrorist attacks on the United States, the Coast Guard has had to reevaluate all of its on-going rulemakings to better focus on those affecting homeland security. We have decided to withdraw this project, as well as all other projects

not directly related to homeland security that we do not expect to take significant action on during the coming year. All comments and documents received in this docket will be available for use in future rulemakings.

This action is taken under the authority of 33 U.S.C. 1903, 46 U.S.C. 3703, 49 CFR 1.46.

Dated: April 15, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02-9837 Filed 4-22-02; 8:45 am]

BILLING CODE 4910-15-P

FEDERAL MARITIME COMMISSION**46 CFR Part 540****[Docket No. 02-07]****Financial Responsibility Requirements for Nonperformance of Transportation-Discontinuance of Self-insurance and the Sliding Scale, and Guarantor Limitations****AGENCY:** Federal Maritime Commission.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its procedures for establishing passenger vessel financial responsibility for nonperformance of transportation. The proposed rule eliminates the availability of self-insurance, limits those who can provide a guaranty, and discontinues the use of a sliding scale for required coverage of unearned passenger revenue ("UPR").

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than May 23, 2002.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Room 1046, Washington, DC 20573-0001, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Room 970, Washington, DC 20573-0001, 202-523-5787. E-mail: sandrak@fmc.gov.

SUPPLEMENTARY INFORMATION: Section 3, Pub. L. 89-777, 46 U.S.C. app. 817e, ("section 3") ¹ requires passenger vessel

¹ Section 3 provides, in pertinent part

operators ("PVOs")² to establish their financial responsibility to indemnify passengers for nonperformance of transportation. The Commission's implementing regulations at 46 CFR part 540, subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least 110% of the PVO's highest unearned passenger revenue ("UPR")³ over the most recent two-year period, subject to a \$15 million maximum for those PVOs establishing financial responsibility by means other than self-insurance or escrow agreement. However, those PVOs not qualifying by self-insurance may elect to use a sliding scale formula to compute the amount of financial responsibility required, if they can establish five years operational experience in the U.S. trades with a satisfactory explanation of any claim for nonperformance. Self-insuring PVOs must establish net worth equal to at least 110% of UPR.

Recent bankruptcies of several PVOs, coupled with the experience of passengers in receiving payment in satisfaction of claims, have caused the Commission to re-evaluate its rules governing PVO coverage for nonperformance. During the past fifteen months, the following cruise lines embarking passengers from U.S. ports ceased operations: Premier Cruise Operations Ltd., Commodore/Crown Cruise Lines, Cape Canaveral Cruise Lines, Inc., and American Classic Voyages Company ("AMCV")⁴. All but

Cape Canaveral filed for bankruptcy. After ceasing operations, Cape Canaveral provided reimbursement to passengers.

Even though passengers with tickets on Premier and Commodore experienced delays in being reimbursed,⁵ they ultimately were protected by surety bonds under the Commission's PVO program. AMCV, however, had evidenced its financial responsibility by means of the self-insurance provisions of the Commission's rules (46 CFR 540.5(d)). Its passengers were limited to reimbursement by credit card companies, third party travel insurance the passenger had purchased,⁶ or by filing a proof of claim with the appropriate bankruptcy court. Unfortunately, it appears that many of AMCV's passengers will receive little reimbursement.

Although self-insurers currently are required to submit quarterly and annual balance sheets and income statements, by the time such data are received, financial and economic conditions could change substantially.⁷ Historically, self-insurers under the Commission's program typically are those with the greatest financial vulnerability.⁸ Consequently, self-insurance presents significantly greater risk to passengers than other methods available to PVOs to demonstrate the required evidence of financial responsibility.

During the 1990s, the Commission raised the question of continuing to allow PVO self-insurance on a number of occasions.⁹ Prior to 1993, the

Commission required that a self-insuring PVO maintain both net worth and working capital in an amount exceeding their UPR by 110%. Effective February 1, 1993, the Commission eliminated the working capital requirement, instead requiring at least five years of operation in the U.S. trades with a satisfactory explanation of any claims for nonperformance of transportation, along with the necessary net worth.¹⁰ The Commission's recent experiences, particularly with AMCV, indicate that length of operations and net worth are not sufficient criteria to insure the necessary protection to the passenger public.

One of the more serious criticisms of self-insurance is the virtual impossibility of protecting passengers when an operator begins to show financial problems. Once its financial situation begins to deteriorate, a self-insuring PVO may not be able to obtain a surety bond or a guaranty. Typically, to provide coverage in such a situation a bond issuer would require, in addition to the bond premium, secure, liquid collateral in an amount close to, if not equal to, the face amount of the bond. Providing such collateral, or even depositing UPR into an escrow agreement, could cause the demise of a PVO that is experiencing financial problems. Similarly, for the Commission to revoke the PVO's self-insurance certificate under such circumstances increases the risk that the PVO would be forced into bankruptcy, thus causing the very nonperformance the Commission seeks to prevent.

The Commission also has considered recent developments impacting its passenger vessel operator financial responsibility program. Those

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

² For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

³ UPR means "passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed" (46 CFR § 540.2(i)).

⁴ Currently, the Delta Queen Steamboat Co. does provide limited service via the operations of the DELTA QUEEN and the MISSISSIPPI QUEEN. This service is covered by an approved escrow agreement.

⁵ Premier's surety began payments late in the summer of 2001, almost a year after its bankruptcy, and Commodore's began paying claims the first week of January 2002, slightly more than a year after its bankruptcy.

⁶ Often cancellation insurance is offered by both the cruise line itself and by various third party insurers. Not all policies include coverage in the event of bankruptcy.

⁷ The financial information submitted by AMCV for the quarter ending June 30, 2001, was submitted on August 30, 2001. This data showed AMCV's net worth clearly exceeding that required by Commission rules for self-insurers. Data for the quarter ending September 30, 2001 had not been submitted by the time AMCV filed for bankruptcy on October 19, 2001.

⁸ Financial data for the two private PVOs presently establishing coverage under the Commission's self-insurance criteria show both companies operating with substantially less than positive net working capital. The Commission currently is working with each of these PVOs to establish a more acceptable form of financial coverage.

⁹ Docket No. 90-1, *Security for the Protection of the Public, Maximum Required Performance Amount*, Proposed Rule, 55 FR 1850 (January 19, 1990); Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990).

Fact Finding Investigation No. 19, *Passenger Vessel Financial Responsibility Requirements*,

Order of Investigation, 55 FR 34610 (August 23, 1990).

Docket No. 91-32, *Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation—Advance Notice of Proposed Rulemaking and Notice of Inquiry*, 56 FR 40586 (August 15, 1991).

Docket No. 92-19, *Revision of Financial Responsibility Requirements for Nonperformance of Transportation*; Proposed Rule, 57 FR 19097 (May 4, 1992), Final Rule, 57 FR 41887 (September 14, 1992).

Docket No. 92-50, *Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-Insurance Qualification Standards*, Proposed Rule, 57 FR 47830 (October 20, 1992), Final Rule, 57 FR 62479 (December 31, 1992).

Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation*; Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 FR 33059 (June 26, 1996).

Docket No. 94-21, *Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation*, 59 FR 52133 (October 26, 1994).

¹⁰ Docket No. 92-50, *supra*.

developments include recent cruise line bankruptcies; the aftermath of the events of September 11, 2001; the current economic uncertainty and its effect on sales of cruises; and the impending deployment of a substantial increase in cruise ship capacity. These developments, combined with the financial condition of current self-insurers, inevitably lead to the conclusion that self-insurance is an inadequate method of protecting passengers for non-performance.

Additionally, the Commission occasionally has approved guarantors using the same financial standards as for self-insurers, i.e. net worth. As with self-insurers, the Commission finds those requirements inadequate for guarantors, and proposes to modify its guaranty requirements to limit guarantors to Protection and Indemnity Associations with substantial assets, reserves and reinsurance to protect covered PVOs.

Further, the current sliding scale formula provides for reduced coverage, the amount of which is not based on financial criteria. There is no requirement for a fixed amount under the sliding scale provisions. As a result, the current formula reduces the required financial coverage to levels the Commission now believes are inadequate, in light of recent developments.

Accordingly, the Commission is proposing to amend its rules to eliminate self-insurance as an acceptable method of evidencing financial responsibility under section 3 of Pub. L. 89-777. In addition, the proposed rule would eliminate the reduced coverage requirements under the Commission's sliding scale formula. If made final, all PVOs who are self-insurers or who use the sliding scale would be required to obtain coverage that comports with the Commission's new rules.

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as

amended (46 U.S.C. app. 1716(a), and for the reasons stated above, the Federal Maritime Commission proposes to amend 46 CFR part 540 as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. The authority citation to Part 540 continues to read:

Authority: 5 U.S.C. 552, 553, secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 317(e), 817(d); sec. 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1716(a)).

2. Section 540.5 is amended as follows:

- a. Revise the heading and introductory text;
- b. Revise paragraph (c);
- c. Remove paragraphs (d) and (e).
- d. Redesignate paragraph (f) as paragraph (d).

The revisions read as follows:

§ 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

(c) Filing with the Commission a guaranty on Form FMC-133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

3. Amend Form FMC-131, Part II, as follows:

- a. Revise Item 10. to read:
- b. Remove Item 15.

The revision reads as follows:

Part II—Performance

10. Items 11-14 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

- [] Insurance (item 11).
 [] Escrow (item 12).
 [] Surety bond (item 13).
 [] Guaranty (item 14).

* * * * *

15. [Removed]

By the Commission
 Bryant L. VanBrakle,
 Secretary.

[FR Doc. 02-9796 Filed 4-22-02; 8:45 am]

BILLING CODE 673041-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM 95-31; DA 02-804]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Media Bureau of the Commission extends the deadline for filing comments and reply comments. The Bureau takes this action upon the motion of several interested parties. A brief extension of time will provide the public additional time to consider the difficult legal and policy issues at stake in the proceeding, and will not compromise the timely resolution of those issues.

DATES: Comments are due on or before May 15, 2002; reply comments are due on or before June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy Division, Media Bureau, (202) 418-2130 or ebash@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Order in MM 95-31; DA 02-804, adopted April 9, 2002 and released April 9, 2002. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail